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UNITED STATES BANKRUPTCY COURT  
IN AND FOR THE DISTRICT OF ARIZONA

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BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re ARTHUR D. and  
DAWN ANN SWARTZ,

Chapter 7 Proceeding  
Case No. BK-05-07523 CGC

UNDER ADVISEMENT DECISION RE:  
TRUSTEE'S OBJECTIOY TO EXEMPT  
PROPERTY

Debtors.

Before the Clourt. is the Trustee's Objection to Exemptions and Objection to Amended Objection, in which he disputes the Debtors' claimed exemption in a retirement annuity (the "Annuity"). The Court sustains Trustee's objection fur the following reasons.

The parties do not dispute that in October, 2000, Debtors purchased an Annuity with The Hartford Life Insurance Company ("Hartford"). They terminated the Annuity on October 20, 2004, and a check in the amount of \$39,019.74 was issued to Travelers Life. & Annuity ("Travelers") from Hartford that same day. Six days later, Debtors purchased a new Annuity from Travelers using the funds previously transferred to Travelers from Hartford. Debtors filed bankruptcy approximately six months Inter on April 28, 2005.

Upon filing this case, Debtors claimed the Travelers' Annuity exempt pursuant to Arizona Revised Statute ("A.R.S.") section 33-1126(B), which exempts various tax qualified retirement plans. The Trustee challenges this claimed exemption on the ground that the Annuity does not qualify under any of the provisions of the Internal Revenue Code cited in A.R.S. section 33-1126(B).<sup>1</sup>

Debtors respond, essentially admitting that the Annuity does not qualify under section 33-1126(B) as a tax-qualified retirement plan. Instead, Debtors urge several additional grounds for

<sup>1</sup>Section 33-1126(B) exempts

[a]ny money or other assets payable to a participant in or beneficiary of, or an; interest of any participant or beneficiary in, a retirement plan under section 401(a), 403(a), 403(b), 408, 408A or 409 or a deferred coinpensation plan under section 457 of the United State internal revenue code of 1986, as amended, shall be exempt from any and all claims of creditors of the beneficiary or participant

1 finding the Annuity exempt. First, Debtors shift gears and state that they are really relying on  
2 A.R.S. section 20-1131.01, which was promulgated by the Arizona Legislature **back** on May 6,  
3 2004, with **much** fanfare and which liberally provided that insurance policies and annuity contracts  
4 issued by life, health or accident insurance companies are exempt from seizure. The Court rejects  
5 this ground for claiming the Annuity exempt.

6 As Debtors themselves admit, section 20-1131.01 was repealed on April 20, 2005,  
7 effectively disallowing the unlimited exemption for annuities. Also in 2005, section 33-1126 was  
8 amended to add subparagraph (A)(7), which requires an annuity, he owned for at least two years  
9 before it can **be** exempt from seizure. Debtors complain, however, that both the repeal of section  
10 20-1131.01 and the amendment of section 33-1126 were done on an emergency basis and without  
11 advance notice. Therefore, when Debtors filed for bankruptcy only eight days after the state  
12 exemption laws changed, they were **unaware** the law had changed denying them their previously  
13 available right to exempt the Annuity from collection. While this may be the case, the fact remains  
14 that the statute was lawfully repealed and the exemption no longer exists under state law. Debtors  
15 make no challenge to the laws' validity. Therefore, this Court cannot recognize an exemption  
16 under the repealed section 20-1131.01.

17 Alternatively, Debtors ask the Court to exercise its Section 105 powers under the  
18 Bankruptcy Code to allow Debtors to exempt their Annuity from collection by the Trustee.  
19 Debtors' argument in essence is that it would be unfair or inequitable to disallow them this  
20 exemption based on the "quiet" and unknown change in law over a year and a half before they filed  
21 bankruptcy. While the Court is sympathetic to Debtors' plight, nothing in the law allows for such  
22 relief. In addition, the fact that Debtors acted in good faith and with good economic reasons in  
23 transferring the Annuity to Travelers: **awl** not with any intent to manipulate the exemption laws  
24 to shield the assets from the Trustee, does not change the analysis or the outcome.

25 Last, Debtors amended their Schedule C to exempt the Annuity under A.R.S. section 33-  
26 1126(A)(7), which allows an exemption for "[a]n annuity contract where for a continuous

1 unexpired period of two years such contract, has been owned by a debtor and has named as  
2 beneficiary the debtor . . . . " Debtors argue that they actually purchased this Annuity well over  
3 the required statutory two year period, having purchased it from Hartford back in October, 2000.  
4 The subsequent transfer of the Annuity from Hartford to Travelers was simply, Debtors' contend,  
5 a transfer, hut the Annuity was continuously owned by Debtor for more than two years. The  
6 problem with Debtors' argument is that the Annuity was not simply "transferred" to Travelers.  
7 Debtors officially terminated their account with Hartford, had a check issued from Hartford to  
8 Travelers, opened a new account with Travelers, and deposited the funds into that Travelers'  
9 account. Debtors were in fact charged approximately \$1,300 in fees to close the Hartford account.  
10 This is not a situation where the Debtors had a retirement plan under which they could transfer  
11 funds among various accounts or investments without having to close out or cash out the account.  
12 Here, the Hartford account was officially closed. A new account was opened.

13 For the foregoing reasons, the Court sustains Trustee's Objection to Exempt Property. The  
14 Annuity is not exempt. The Trustee is to submit a form of order consistent with this decision for  
15 the Court's signature

16 So ordered.

17 DATED: Nov. 15, 2005

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20 CHARLES G. CASE II  
United States Bankruptcy Judge

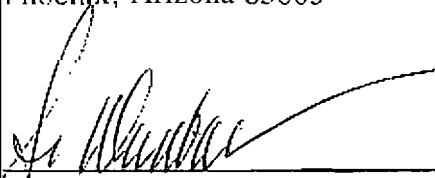
21 COPY of the foregoing mailed and/or via facsimile  
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